



Comparing Tennessee's Ethical Rules for Judges, Lawyers and Mediators

Part 2: During the Session—The Walls Have Ears!

Rhoberta Orsland, WC Specialist 4, Memphis

Dr. Larry Bridgesmith, Chief Relationship Officer, ERM Legal Solutions

Stephen F. Libby, Attorney, Libby & Nahmias

Brian Holmes, WC Specialist 3, Murfreesboro Office





Comparing Tennessee's Ethical Rules for Mediators, Lawyers, and Judges

Part II: Intra-Session Ethics – *The Walls Have Ears*





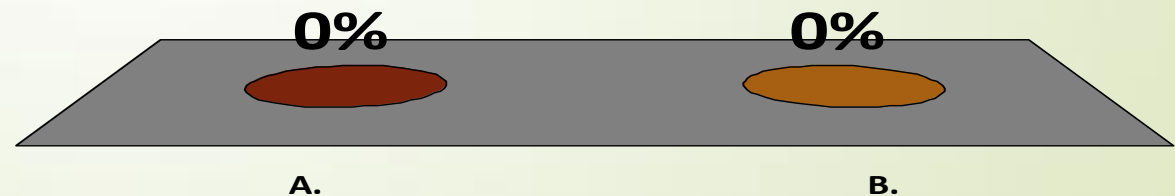
Scenario 1

- Pro se Claimant appears and is clearly outmatched in the session by the attorney for the employer/carrier.
- Claimant's increased discomfort leads to disengagement and withdrawal from negotiations.
- Clearly desiring to escape the session, Claimant agrees to settlement 35% less than normal assuring mediator s/he understands and is willing to forego more.

Has employer/carrier's counsel violated any ethical provisions?

A. Yes

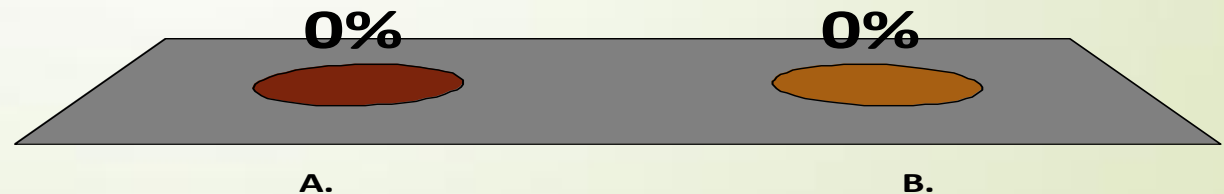
B. No



Has mediator violated any ethical provisions?

A. Yes

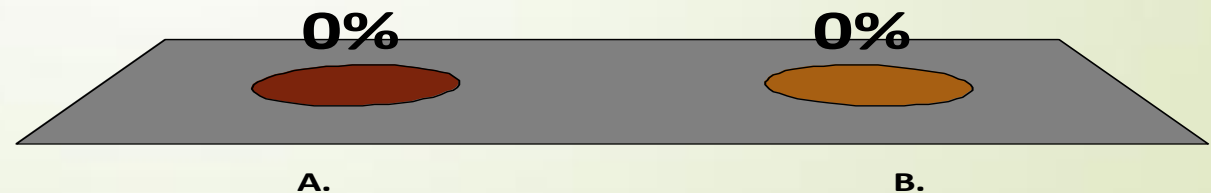
B. No



**If challenged in court, should
judge review context of negotiated
settlement session?**

A. Yes

B. No





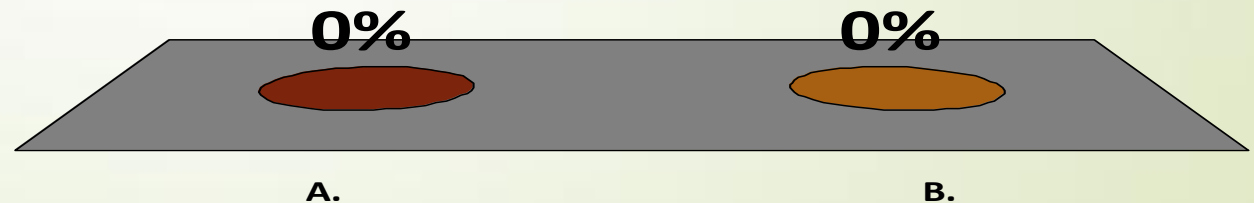
Scenario 2

- Employee represented by counsel at BRC agreed to settlement and signed SD-1 with significant portions incomplete
- 2 years later, Employee's new attorney seeks to set aside settlement for failure:
 - To fully inform Employee of rights
 - To provide for max. cap due to non-RTW
- Trial court exercises inherent authority to set aside unjust settlement

Has employee's initial counsel violated any ethical provisions?

A. Yes

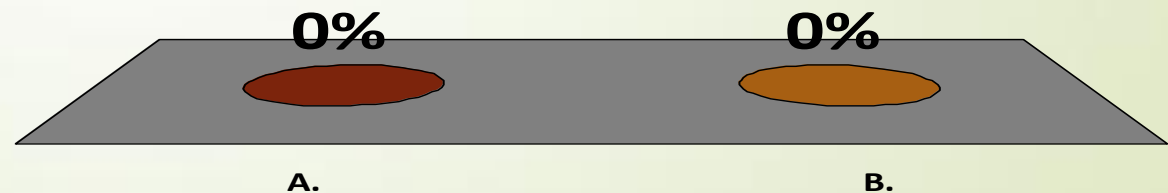
B. No



Has employee's second counsel violated any ethical provisions?

A. Yes

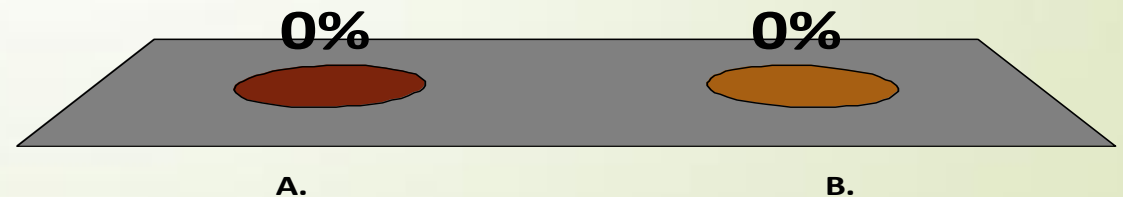
B. No



Did trial court violate any ethical provisions?

A. Yes

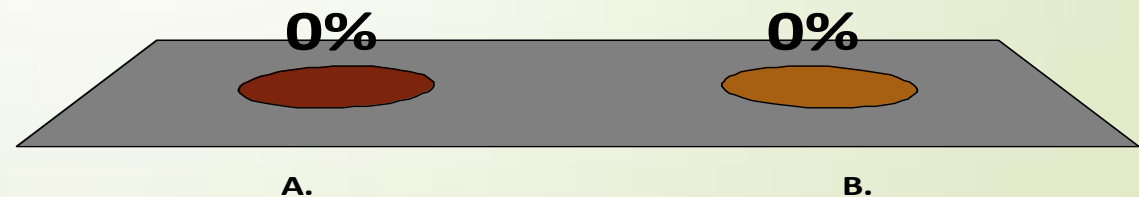
B. No



Did mediator violate any ethical provisions?

A. Yes

B. No





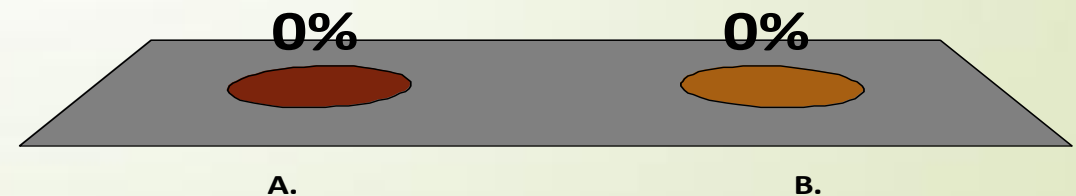
Scenario 3

- In BRC session, Claimant's attorney fails to correct testimony of lesser injury than sustained.
- Counsel for employer/carrier knows the degree of injury to be greater than as testified
- Mediator has record evidence of greater degree of injury
- Settlement reached on basis of incorrect testimony

Has employee's counsel violated any ethical provisions?

A. Yes

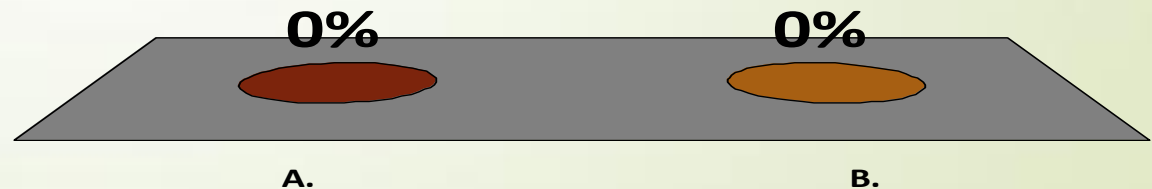
B. No



Has employer/carrier's counsel violated any ethical provisions?

A. Yes

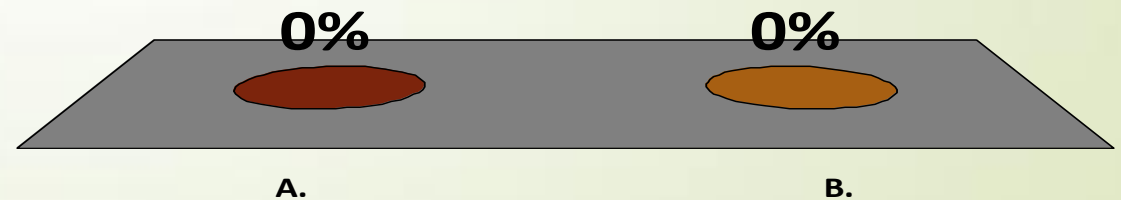
B. No



Has mediator violated any ethical provisions?

A. Yes

B. No





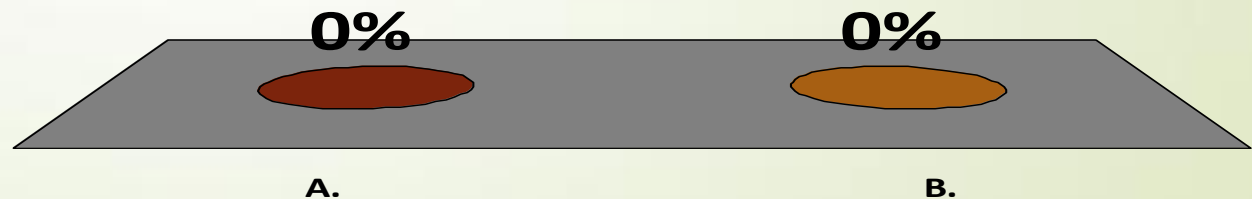
Scenario 4

- In BRC private session, mediator learns of claimant's interim employment which claimant and attorney request remain confidential
- In private session with employer/carrier, mediator states "hypothetical" which suggests substance of requested confidentiality
- Employer/carrier substantially reduces settlement and settlement averted

Has mediator violated any ethical provisions?

A. Yes

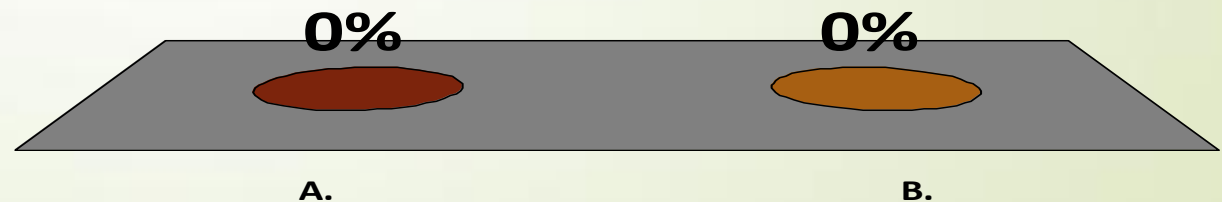
B. No




Has mediator violated any ethical provisions?

A. Yes

B. No

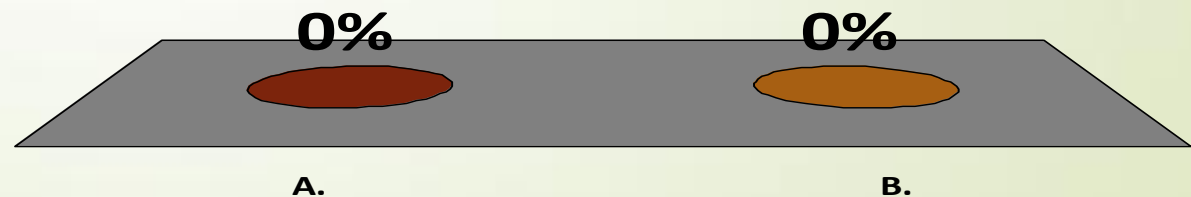




Has claimant counsel violated any ethical provisions?

A. Yes

B. No





Door Prize ! ! !

2nd Fastest Responder with the Correct Answer Wins

Target Gift Card
(Valued at \$50.00)

Donated By:



Is a panel of physicians that is given orally to an Employee considered by statute to be a valid panel?

A. Yes



B. No



Fastest Responders

Seconds	Participant
0.667	2
1.309	7
1.452	21
1.829	8
2.075	20
2.09	12
2.183	11
2.458	3
3.27	1



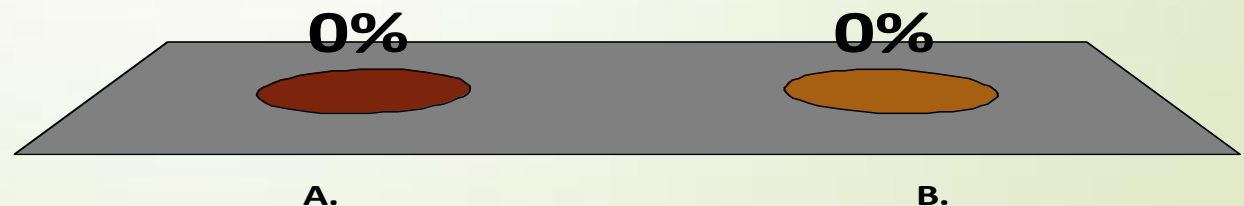
Scenario 5

- In BRC session, employer/carrier counsel claims authority less than actually granted
- Mediator informed by employer/carrier counsel of higher authority but instructed not to disclose
- Claimant's attorney insists on settlement above alleged authority, but within actual authority
- After impasse reached, mediator reports employer/carrier counsel for "bad faith"

Has employer/carrier counsel violated any ethical provision?

A. Yes

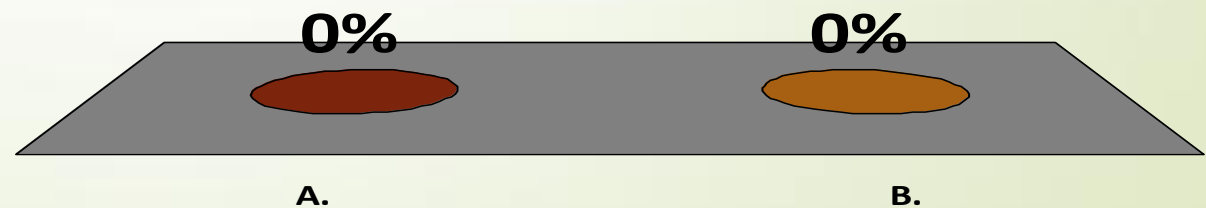
B. No



Has mediator violated any ethical provision?

A. Yes

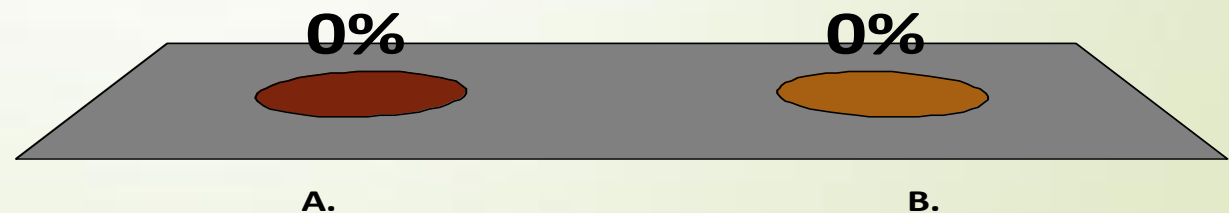
B. No



Does Claimant attorney have any recourse?

A. Yes

B. No





Comparing Tennessee's Ethical Rules for Mediators, Lawyers, and Judges

Part II: Intra-Session Ethics – *The Walls Have Ears*